

REMARKS

Reconsideration and withdrawal of the rejections with respect to the pending claims are respectfully requested in view of the foregoing amendments and the following remarks.

Initially, Applicants would like to acknowledge the Examiner's indication that claims 1 and 11 are generic claims. Upon allowance of one or more generic claims, Applicants hereby reserve the right to add claims to additional species under 37 C.F.R. §1.141.

With respect to the drawings, Applicants respectfully disagree with the Examiner indication that the drawings do not show all of the elements specified in the claims. The Examiner's attention is kindly directed to Figs. 3, 4, and 7 which show the manipulating ends of the jaw members with filleted peaks 55a, 55b or rounded portions which are configured to reduce areas of high current concentration during electrical activation. In addition, the Examiner's attention is also directed to the description on page 10, lines 17-21. In view thereof, it is respectfully submitted that no proposed drawing corrections are required.

Turning now to the Examiner's rejection of claims 1, 2, 4 and 7 under 35 USC §102(b) as being anticipated by U.S. Patent No. 2,397,823 to Walter, it is respectfully submitted that independent claim 1 as newly amended is patentably distinguishable over this reference for at least the reasons stated below.

More particularly, Applicants have amended claim 1 to include the limitation that Applicants' invention is directed towards an electrosurgical instrument in which a first of the plurality of different wave forms includes large undulating wave forms with substantially large radiuses of curvature and substantially smooth complementary surfaces to facilitate clamping of tissue between the jaw members and the second of the plurality of different wave forms include small teeth-like wave forms which are configured and dimensioned (i.e., filleted or rounded) to reduce areas of high current concentration during electrical activation.

It is respectfully submitted that the '823 Walter patent does not relate to electrosurgical instruments and does not include Applicants' unique plurality of different wave forms disposed in complementary arrangement on opposing jaw members. The '823 Walter, in contrast, relates to a forceps which includes a plurality of pointed teeth-like elements with various non-complimenting recessed portions for grasping tissue:

The two side-edge crests of each jaw are irregularly serrated, as at 38a, 38b and are differently and non-oppositely recessed upon arcs of different curvature as represented at 38c, 38d and 38e. '823 Walter, Page 2, column 1, lines 29-35.

Moreover, the teeth of the '823 Walter are not filleted, but rather include "serrated edges" for manipulating tissue. Applicants' claim 1 recites filleted manipulating wave forms which are designed to reduce areas of high current concentration which may lead to unwanted tissue damage during activation. The Examiner has equated tooth 38f of the '823 Walter as the manipulating element which is clearly not the same as Applicants' second wave form:

Opposite this outer recess 38c of the plurality recessed jaw edge the other edge has the somewhat longer recess 38e extending substantially fully to the very terminal tip of the jaw, there forming a sharp terminal corner or single tooth 38f. The latter, in cooperation with the plurality toothed terminus of the oppositely arranged jaw see Figs. 5 to 7, is adapted to pickup and hold firmly relatively minute articles and objects such as the smaller surgical needles, sutures, etc. '823 Walter, Page 2, column 1, lines 44-53.

Applicants' filleted manipulating portions as defined in Applicant's specification on page 10, line 17 are not sharp teeth-like serrations as described in the '823 Walter patent. Applicants' filleted portions are designed to both manipulate tissue and reduce areas of current concentration during electrical activation. The pointed teeth-like serrations 38a-38e and single tooth 38f of '823 Walter would actually form areas of high current concentration and char tissue if the '823 Walter device were in fact an electrosurgical instrument. Thus, it would seem that the '823 Walter reference actually teaches away from Applicants' claim 1 as amended.

It is therefore respectfully submitted that the '823 Walter reference does not anticipate, teach or suggest the unique combination of elements recited in Applicants' newly amended claim 1. It is therefore respectfully submitted that claim 1 as amended is patentably distinguishable from this reference. Likewise, dependent claims 3 and 4 are patentably distinguishable from the '823 Walter reference for at least the same reasons as set forth above.

With respect to the Examiner's rejection of independent claim 1 under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,275,615 to Rose, it is respectfully submitted that claim 1 as newly amended is patentably distinguishable from this reference for at least the same reasons as stated above and the fact that the '615 Rose does not include the unique combination of elements as newly amended claim 1 of Applicants' invention.

More particularly, the '615 Rose shows large undulating wave forms which include serrations or teeth 60 disposed thereon. Rose does not include separate and different waveforms and recited in claim 1 of Applicants' invention. Moreover, nowhere does Rose anticipate, disclose or even remotely suggest having filleted wave forms for reducing areas of current concentration during electrical activation. It is therefore respectfully submitted that claim 1 and claims 3 and 4 which depend therefrom are patentably distinguishable from the '615 Rose reference.

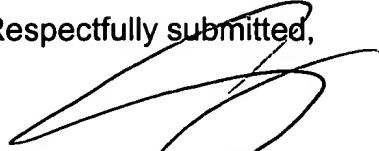
The Examiner has also rejected claim 11 under 35 USC §102(b) as being anticipated by U.S. Patent No. 3,404,677 to Springer. However, and for similar reasons as stated above with respect to the '823 Walter reference, the '677 Springer patent does not anticipate, teach or suggest the unique combination of elements of Applicants' claim 1 as newly amended. The '677 Springer includes a plurality of teeth-like or serrated waveforms with a sharp cutter 26' disposed on the distal end thereof. Again, if this design were electrified it would simply run afoul of the very intent of Applicants' design, i.e., to have large clamping portions with undulating, smooth surfaces for clamping and filleted manipulating portions which are designed to reduce areas of high current concentrations at the distal end to limit possible tissue damage during activation.

It is therefore respectfully submitted that claim 11 is not anticipated, taught or even remotely suggested by the '677 Springer reference and, as a result, claim 11 is patentably distinguishable. Likewise and for at least the same reasons, claims 12 and 13 which depend from claim 11 are patentably distinguishable as well.

In view of the foregoing, it is respectfully submitted that all of the claims of the present application, namely, claims 1, 3, 4, 11, 12 and 13 are distinguishable over the references of record and are in proper condition for

allowance. Accordingly, passage of the application to issue at an early date is earnestly solicited.

Respectfully submitted,



Edward C. Meagher
Attorney for Applicants
Reg. No. 41,189

CARTER, DELUCA, FARRELL & SCHMIDT, LLP
445 Broad Hollow Road - Suite 225
Melville, New York 11747
631-501-5708 (T)
631-501-3526 (F)